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Part 2

HR 212

IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1986

COMPLETED
52

AUGUST 5, 1986.—Ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

ORIGINAL

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 3810]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 3810) to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, having considered the same, report those provisions of the bill within the jurisdiction of the Committee with amendments and recommend that the provisions as amended be agreed to.

The amendments (stated in terms of page and line numbers of the bill as reported by the Committee on the Judiciary) are as follows:

AMENDMENT NO. 1

Page, 5, strike out lines 11 through 23.

AMENDMENT NO. 2

Page 6, line 5, and page 7, line 6, strike out "(7)(C)" and insert in lieu thereof "(6)(C)".

Page 10, strike out lines 8 through 14.

Page 10, lines 15 and 21, strike out "(6) and "(7)", respectively, and insert in lieu thereof "(5)" and "(6)", respectively.

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AMENDMENT NO. 3

Page 13, amend lines 13 through 20 to read as follows:

"(B) CIVIL MONEY PENALTY FOR PATTERN AND PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall, after having been afforded notice and opportunity for an administrative hearing, be subject to a civil penalty of not less than $3,000, and not more than $10,000, for each unauthorized alien with respect to whom the violation occurred.

AMENDMENT NO. 4

Page 23, line 20 insert "(for a person on that person's behalf)" after "practice".

Page 24, line 2, strike out "person filing a charge" and insert in lieu thereof "Special Counsel by certified mail".

Page 26, beginning on line 24, strike out "and the service of copy thereof upon the person or entity against whom such charge is made".

Page 27, line 14, insert after "hearing" the following: ". upon the motion of the party filing the complaint,".

Page 28, line 6, strike out "full".

Page 29, line 13, insert before the period the following ", which shall be final unless appealed as provided under subsection (i)".

Page 29, line 16, and page 32, line 2, strike out "testimony taken" and insert in lieu thereof "evidence".

Page 32, strike out line 14 and all that follows through page 33, line 13 and insert in lieu thereof the following:

"(i) REVIEW OF FINAL ORDERS.—

"(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

"(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

"(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent

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resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

"(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of administrative law judge shall not be subject to review.

"(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

"(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.".

AMENDMENT NO. 5

Page 57, line 4, strike out "applicable fair hearing process" and insert in lieu thereof "fair hearing process (which includes, at a minimum, the requirements of paragraph (6))".

Page 57, after line 5, insert the following new paragraph:

"(6) The minimal requirements of this paragraph for a fair hearing process are as follows:

"(A) The institution provides the individual concerned with written notice of the determination described in paragraph (5) and of the opportunity for a hearing respecting the determination.

"(B) Upon timely request by the individual, the institution provides a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status.

"(C) Not later than 45 days after the date of an individual's request for a hearing, the official will notify the individual in writing of the official's decision on the appeal of the determination.

Page 57, line 24, strike out all that follows the first period.

Page 57, after line 24, insert the following new subsection:

"(e) Notwithstanding subsection (c), if—

"(1) a guaranty is made under this title for loan made with respect to an individual,

"(2) at the time the guaranty is entered into, the provisions of subsection (c) had been complied with,

"(3) amounts are paid under the loan subject to such guaranty, and

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"(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.".

Page 60, after line 11, insert the following:

(7) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 489(a) of the Higher Education Act of 1965 (20 U.S.C. 1096) is amended by adding at the end the following: "In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 484(c).".

Page 61, after line 14, insert the following new subsection:

(d) GAO REPORTS.—

(1) REPORT ON CURRENT PILOT PROJECTS.—The Comptroller General shall—

(A) examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and

(B) report, not later than October 1, 1987, to Congress and to the Commissioner of the Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system referred to in subsection (c)(1).

(2) REPORT ON IMPLEMENATION OF VERIFICATION SYSTEM.—The Comptroller General shall—

(A) monitor and analyze the implementation of such system,

(B) report to Congress and to the appropriate Secretaries described in subsection (c)(4)(D)(ii), by not later than April 1, 1989, on such implementation, and

(C) include in such report such recommendations for changes in the system as may be appropriate.

Page 61, line 7, strike "The amendments" and insert "Except as provided in paragraph (4), the amendments".

Page 61, after line 10, insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

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(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program until after the date of receipt of such report with respect to the program.

(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) and information contained in such an application), that—

(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

(I) is as effective, accurate, and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate infor-

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mation to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

(D) DEFINITIONS.—In this paragraph:

(i) The term "covered program" means each of the following programs:

(I) The aid to families with dependent children program under part A of title IV of the Social Security Act.

(II) The medicaid program under title XIX of the Social Security Act.

(III) The supplemental security income program under title XVI of the Social Security Act.

(IV) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act.

(V) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954.

(VI) The food stamp program under the Food Stamp Act of 1977.

(VII) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980.

(VIII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965.

(ii) The term "appropriate Secretary" means, with respect to the covered program described in—

(I) subclauses (I) through (IV) of clause (i), the Secretary of Health and Human Services;

(II) clause (i)(V), the Secretary of Labor;

(III) clause (i)(VI), the Secretary of Agriculture;

(IV) clause (i)(VII), the Secretary of Housing and Urban Development; and

(V) clause (i)(VIII), the Secretary of Education.

(iii) the term "administering entity" means, with respect to the covered program described in—

(I) subclause (I), (II), (IV), (V), or (VI) of clause (i), the State agency responsible for the administration of the program in a State;

(II) clause (i)(III), the Secretary of Health and Human Services;

(III) clause (i)(VII), the Secretary of Housing and Urban Development, a public housing agency, or another entity

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that determines the eligibility of an individual for financial assistance; and

(IV) clause (i)(VIII), an institution of higher education involved.

AMENDMENT NO. 6

Page 79, line 23, strike out "Subparts 4 and 5 of part A of title" and insert in lieu thereof "Title".

AMENDMENT NO. 7

Page 85, line 6, insert "(1)" after the dash.

Page 85, after line 10, insert the following:

(2) Amounts appropriated under this subsection for a fiscal year which are not obligated by the end of such year shall remain available for obligation during the next fiscal year.

(3) If the amounts appropriated under this subsection for a fiscal year are insufficient to provide fully for reimbursement and payments under subsections (b) and (c) for the fiscal year—

(A) amounts shall first be obligated for purposes of making payments to States and State educational agencies under such subsections, and

(B) in obligating such amounts, amounts shall be allocated among the States and State educational agencies on an equal pro rata basis based on their costs under such subsections in providing public assistance and educational services, except as provided in paragraph (4).

(4)(A) If the amounts appropriated under this subsection for a fiscal year exceed 40 percent, but are less than 100 percent, of the amounts necessary to provide fully for reimbursement and payments under subsections (b) and (c) for the fiscal year, the subsection (b) percentage (as defined in subparagraph (B)) may exceed the subsection (c) percentage, so long as the subsection (c) percentage is not less than 40 percent.

(B) In subparagraph (A), the terms "subsection (b) percentage" and "subsection (c) percentage" mean the ratio (expressed as a percentage) of—

(i) the amounts obligated for purposes of making payments under subsection (b) or subsection (c), respectively, to

(ii) the amounts necessary to provide fully for reimbursement and payments under the respective subsection.

Page 86, line 15, insert "(1)" before "Subject".

Page 86, line 21, strike out the comma and all that follows up to the period on line 23.

Page 86, after line 23, insert the following new paragraph:

(2) The definitions and provisions of the Emergency Immigrant Education Act of 1984 (title VI of Public Law 98-

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511; 20 U.S.C. 4101 et seq.) shall apply to payments under this subsection in the same manner as they apply to payments under that Act, except that, in applying this paragraph—

(A) any reference in such Act to "immigrant children" shall be deemed to be a reference to "eligible legalized aliens" (including such aliens who are over 16 years of age) during the 60-month period beginning with the first month in which such an alien is granted temporary lawful residence under section 245A(a) of the Immigration and Nationality Act;

(B) in determining the amount of payment with respect to eligible legalized aliens who are over 16 years of age, the phrase "described under paragraph (2)" shall be deemed to be stricken from section 606(b)(1)(A) of such Act (20 U.S.C. 4105(b)(1)(A));

(C) the State educational agency may provide such educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations, including community-based organizations of demonstrated effectiveness; and

(D) such services may include English language and other programs designed to enable such aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act.

Page 86, before line 24, insert the following new subsection (and redesignate the succeeding subsection accordingly):

(d) NO DUPLICATION OF ASSISTANCE.—Reimbursement under subsection (b) or subsection (c) shall not be made for costs to the extent the costs are otherwise reimbursed or paid for under other Federal programs.

ANALYSIS OF MAJOR PROVISIONS

The Committee has reported seven numbered amendments, which are discussed in detail to the amendment-in-the-nature of a substitute reported by the Judiciary Committee.

The Committee recognizes that this Bill will effect changes in the resident status and work status of many documented and undocumented workers who are or will be employed as migrant or seasonal workers in the U.S. agriculture industry. Therefore, the Committee urges the Secretary of Labor to ensure that the Department and state Job Training Partnership Act (JTPA) programs fully utilize the expertise of JTPA Section 402 Migrant and Seasonal Farmworker Programs to meet the job training and related service needs of such migrant and seasonal workers.

In addition, the committee does not intend that any provision of this Act would limit the powers of State or Federal labor standards agencies such as the Occupational Safety and Health Administration, the Wage and Hour Division of the Department of Labor, the Equal Employment Opportunity Commission, the National Labor

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Relations Board, or Labor arbitrators, in conformity with existing law, to remedy unfair practices committed against undocumented employees for exercising their rights before such agencies or for engaging in activities protected by these agencies. To do otherwise would be counter-productive of our intent to limit the hiring of undocumented employees and the depressing effect on working conditions caused by their employment.

EMPLOYMENT SERVICE

AMENDMENT NO. 1

H.R. 3810 makes it unlawful for a person or other entity knowingly to hire, or to recruit or refer for a fee, for employment in the United States, an unauthorized alien. H.R. 3810 also prohibits the hiring or recruitment or referral for a fee of any individual without complying with the requirements of the employment verification system established by section 101 of the bill. A person or entity which does comply in good faith with the employment verification system establishes an affirmative defense against a charge of knowingly hiring, recruiting or referring for a fee an unauthorized alien.

As reported from the Judiciary Committee, H.R. 3810 amends the Immigration and Nationality Act to create a new section 274(a)(5), which waives the verification requirement and provides an affirmative defense against a charge of its violation or a violation of section 274(a)(i)(A) for an employer who hires an individual who was referred by a State employment agency if the employer has and retains documentation from the agency which certifies that the agency complied with the employed verification system.

Section 274A(a)(5) does not impose any verification or paperwork requirements on State employment agencies. Nor does it provide an affirmative defense against a violation of section 274A(a)(2) for an employer who retains a State employment agency's certification of compliance if the employer continues to employ an individual after learning that the individual is an unauthorized alien.

The Committee's amendment number one strikes this waiver provision from H.R. 3810 because it creates an affirmative defense for hiring violations even where the employer knows that the State employment service certificate is inaccurate and that the employee is an unauthorized alien and because of its potential costs for the State Employment Service Agencies.

Secretary of Labor Brock points out that the waiver provision will create heavy pressure on State Employment Agencies to issue referral documents certifying that they had complied with the requirements of the bill's employment verification system. Under the Job Training Partnership Act, Employment Service planning is conducted on a local level jointly with employer dominated private industry council's and local elected officials. Employers will have a powerful motivation to shift the cost of employment verification from themselves to the Employment Service and may have the means to do so.

The Committee agrees with Secretary Brock, the National Governors' Association, and the Interstate Conference of Employment Security Agencies that such a result would be undesirable. The Em-

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ployment Service is already over burdened with functions and responsibilities that are ancillary to its primary role as a public labor market exchange. A new paperwork requirement would further weaken its effectiveness, particularly since no additional funds are authorized for such an activity. Secretary Brock estimates that State Employment Service Agencies would spend as much as $45 million annually to perform the verification function. If the Attorney General's definition of State employment agency included agencies involved in programs such as the Job Training Partnership Act or the Work Incentive Program, the public costs would be much greater.

The Committee agrees with Secretary Brock that the waiver provision could lead to a large-scale production of fraudulent government documents if the State Employment Service Agencies were to issue some form of identification documentation to all individuals using their services.

Time for Compliance With Verification of Employability

AMENDMENT NO. 2

The second Committee amendment was to strike the added time given for compliance with the bill's requirements for verification of the employability of a newly hired employee.

H.R. 3810, as reported by the Judiciary Committee requires all employers to comply with certain paperwork responsibilities as to all persons hired, recruited or referred for employment, including validation of social security account numbers and verifying that the individual is eligible to be employed by attesting that the individual's document "reasonably appears on its face to be genuine." If the employer fails to so comply, he/she is subject to a paperwork violation and subsequent civil money penalty, and loses his/her defense to a sanctions violation.

H.R. 3810, also provides that such an employer meets his/her paperwork duty associated with the "hiring" of an individual, if "the requirements of this subsection (the validation and verification) are first met not later than noon of the day following the day on which the individual is first employed by that person or entity." Because the duty to do paperwork arises at the point of hire, and having in the mind the normal relationship between employer and employee, which generally lasts more than a few days, this provision could be explained as a time accommodation to facilitate the actual paperwork verification. It is also, unfortunately, susceptible to a less favorable construction.

In agricultural employment it is often the practice to hire workers one day at a time. This is particularly the case with day haul operations. Some number of workers are hired each day, depending on need, and only for that day. Since employment would end prior to expiration of the time allowed for verification, such employers, as a practical matter would never have been compelled to verify the worker's status.

While the committee agricultural employment as the example when considering the amendment, other sectors of the economy, such as construction, hire some employees on a day to day basis.

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The committee is concerned that the allowance of extra time to verify the employability of a worker would effectively insulate certain employers from the bill's sanctions and totally negate the legal duty to do paper work. The worker would no longer be employed when the duty to verify employability matured, making it impossible for the employer to complete the verification.

Such "day at a time" employers are likely to be of the type most apt to violate the bill. The Committee believes that there is no valid reason to offer protection against sanctions to such employers. The amendment makes it clear that an employer must verify the employability of every worker hired, at the time of hire.

Elimination of Criminal Penalty

AMENDMENT NO. 3

As reported from the Judiciary Committee, section 101 of H.R. 3810 amends the Immigration and Nationality Act to create a new subparagraph 274A(d)(1)(B) which established a criminal penalty for pattern and practice violations of the prohibitions against knowingly hiring, recruiting, or referring unauthorized aliens and for knowingly continuing to employ an alien after learning that he or she is unauthorized. The penalty is a fine of not more than $1,000, not more than six months imprisonment, or both, for each alien with respect to whom a violation occurs.

The Committee's amendment number three strikes the criminal penalty for pattern and practice violations from section 274A and replaces it with a civil money penalty in an amount not less than $3,000 and not more than $10,000 for each alien with respect to whom the violation occurred.

In decriminalizing regular, repeated, and intentional violations, the Committee does not seek to lessen the law's deterrence of such violations. Experience under the Farm Labor Contractor Registration Act, and since 1983 under the Migrant and Seasonal Agricultural Worker Protection Act, which prohibits the employment, recruitment, hire or use of unauthorized aliens by farm labor contractors, suggests the criminal prosecutions would be rare, at best. In the Committee's judgment, the relatively swift assessment of a $10,000 fine against an employer for each individual with respect to whom the employer violates section 274A (a) (1)(A) or (2) would be a more effective deterrent than a maximum $1,000 fine per violation and the very speculative possibility of a short prison sentence.

Unfair Immigration-Related Employment Practice Charges

AMENDMENT NO. 4

H.R. 3810 as reported from the Committee on the Judiciary, contains a provision making it an unfair immigration-related employment practice to descriminate against an individual, other than an unauthorized alien, based on national origin or citizenship status. An alien lawfully admitted for permanent residence who has declared his/her intention to become a citizen is among those to be protected from discrimination.

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The Committee on Education and Labor strongly endorses this provision and has consistently expressed its fear that the imposition of employer sanctions will give rise to employment discrimination against Hispanic Americans and other minority group members. It is the committee's view that if there is to be sanctions enforcement and liability there must be an equally strong and readily available remedy if resulting employment discrimination occurs. In the last Congress, the full House of Representatives recognized the potential for this unfortunate cause and effect relationship between sanctions enforcement and resulting employment discrimination and by an overwhelming vote of 404–9, adopted the so-called "Frank Anti-discrimination" amendment.

The Committee wishes as well to note the inadequacy of current law to protect individuals from the potential act of discrimination that may uniquely arise from the imposition of sanctions. Title VII of the Civil Rights Act of 1964 protects individuals from discrimination based on race, religion, color, sex or national origin but only if the covered employer of such person employs 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year leaving unprotected those employees employed by employers of less than 15 employees. Those falling within this class would be denied protection from any act of discrimination based on alienage or national origin.

In addition, the Supreme Court has held in the case of *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973) that while all individuals including aliens are protected from discrimination based on race, color, religion, sex or national origin, there is nothing in Title VII which protects any person from discrimination based on alienage/citizenship. Therefore, there exists no Title VII protection or remedy for any individual who suffers discrimination based on alienage, i.e. whether that person is legally in this country or not.

We, as a country, have as national policy admitted individuals for permanent legal residence without demanding full citizenship status, and if H.R. 3810 is enacted, we will again be allowing individuals to legally reside in this country without immediately obtaining full citizenship status. In the same enactment, however, we are making legality of residence a pre-condition to employment. The sanctions provision does not say that to be employed one must be a citizen but only that he/she must not be an unauthorized alien. Because of this prohibition against employment of an unauthorized alien a job applicant is potentially subject to alienage discrimination—Employers will be required for the first time to ascertain the immigration status of applicants. With this information an employer who wants to discriminate against non-citizens will be able to identify them. In recognition of this very real possibility the Committee on Education and Labor fully endorses the policy position of the Committee on the Judiciary as stated in the following excerpt of its committee report:

> The Committee does not believe barriers should be placed in the path of permanent residents and other aliens who are authorized to work and who are seeking employment, particularly when such aliens have evidenced an intent to become U.S. citizens. It makes no sense to admit

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> immigrants and refugees to this country, require them to work and then allow employers to refuse to hire them because of their immigration (non-citizenship) status. Since Title VII does not provide any protection against employment discrimination based on alienage or non-citizen status, the Committee is of the view that the instant legislation must do so." (H. Rep. Comm. Rept. 99-602, Part 1, 1986)

The amendment of the Committee on Education and Labor, does not alter the substantive cause of action as contained in H.R. 3810 as reported by the Judiciary Committee, but rather provides for an alternative administrative procedure for the disposition of these cases. This action is taken for two reasons. First the original "Frank Amendment" incorporated National Labor Relations Board procedure because at the time it was drafted an Immigration Board was established in the underlying bill; that Board is no longer in the underlying bill. Second, the Committee is of the view that the new administrative procedure built around the Special Counsel as contained in H.R. 3810, will result in a faster and more certain determination of rights, benefiting all parties.

The Amendment adopted by the Committee, while multiphase, is designed to improve only the procedural aspects of the bill's anti-discrimination provisions. The Committee emphasizes that the anti-discrimination provisions of the bill will not create a preference based on national origin or citizenship status. Nor shall any employer charged with an individual act of discrimination be liable for having chose either of two equally qualified applicants.

The first change makes clear that the charging party may be the person aggrieved or the legal representative bringing suit on behalf of and with the direct consent of the aggrieved person.

The second change makes the Special Counsel responsible for giving notice by certified mail to the respondent that a charge has been filed against him/her. This relieves the person filing the charge from having to accomplish service.

Third, this amendment removes the time used to effectuate the service as a part of the time tolled (180 days) under the statute of limitations for filing a charge.

Fourth, this amendment will allow amending a complaint only upon the motion of the party filing the complaint who is either the charging party or the Special Counsel. This is essentially a technical change to make it clear that an amendment to a complaint alleging an unfair immigration-related employment practice may be achieved upon motion of the Special Counsel or the person filing the complaint, but not by the Administrative Law Judge *sua sponte.*

Fifth, this amendment deletes the word "full" from the term "full party to any complaint." The underlying subparagraph is intended to indicate that complainant or his representative in a case involving an unfair immigration-related employment practice has all the rights of a party in the case, even though the Special Counsel is pursuing the case. The word "full" adds nothing, and could serve to confuse the status of other parties to the case.

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Sixth, the amendment makes clear that an administrative law judge's order in a discrimination case (unfair immigration-related employment practice) is a final agency order and is enforceable immediately unless appealed in accordance with provisions specified.

Seventh, the term "testimony taken" has been replaced by the word "evidence." This assures that an ALJ may consider records as well as oral testimony in a proceeding under the bill.

Eighth, the amendment provides for an alternative to NLRA procedures for seeking both judicial review of the ALJ's initial order, and court enforcement of the order if violated, as provided for in H.R. 3810. The new procedure works as follows: (1) once an ALJ issues his/her order, it becomes a final agency order, subject to judicial review on both law and facts, (2) any person aggrieved by that final order including the complainant, the respondent, or the special counsel, may seek judicial review of the ALJ's order in the U.S. Court of Appeals, under the substantial evidence rule. This appeal must be taken no later than 60 days after the entry of the final order, (3) if the appeal is taken within the 60 days, then the Court of Appeals will review the issues of fact and law and issue its own order. If it is an order to enforce the ALJ's order, then a violation of the court order is immediately enforceable in the Court of Appeals, as contempt of court, (4) if, however, the appeal of the ALJ's order is not taken within the 60 days, the aggrieved party loses his/her right to review of the ALJ order. Therefore, when a violation of that order occurs, an action for enforcement can be brought, either by the Special Counsel or the person filing the charge, in U.S. district court.

Systematic Alien Verification for Entitlement (SAVE)

AMENDMENT NO. 5

The fifth amendment adopted by the Committee is related to the SAVE program.

SAVE is the acronym for the system required by H.R. 3810 for verification that an alien is eligible for benefits under certain entitlement programs. (AFDC, Medicaid, Unemployment Compensation, Food Stamps, Housing Assistance, and Title IV Educational Assistance).

The Committee is fully committed to the principle that only those individuals eligible to receive federal program benefits should receive them and that every effort be made to insure that noneligible individuals are prevented from wrongfully obtaining such benefits.

The Committee recognizes, however, that the relationship between an alien's legal status and his eligibility for benefits under various assistance programs is extremely complex, both because of the large variety of statuses that are available, and because eligibility rules differ significantly across programs. It is not the intention of this Committee to deny benefits to any currently eligible recipient. The Committee's concern with the SAVE provision arises from certain problems reported to have surfaced during various pilot projects operated by the Immigration and Naturalization Service.

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The Education and Labor Committee is concerned with the mandatory nature of the SAVE provision of H.R. 3810, and has therefore amended section 121 of H.R. 3810, as reported by the Judiciary Committee in three respects: (1) by requiring reports from the General Accounting Office, (2) by providing the various program Secretaries with discretion to waive the required verification program under certain circumstances, and (3) clarifying certain procedural requirements for alien status verification for educational assistance programs.

Reports by the General Accounting Office

The SAVE Program has been in operation in limited form in pilot projects in a number of status and localities, particularly California, Colorado, Florida, Illinois, Houston, and New York City. It is the Committee's understanding that these pilot programs have experienced various problems. The Committee's amendment will require a report by the Comptroller General on the current pilot projects. Mr. Petri offered a perfecting amendment, which was unanimously accepted to assure that the report is to cover the effectiveness of the program as well as the problems shown by the various pilots. The report is to include recommendations for changes prior to the implementation of the system. The report must be filed with the Congress and the Commissioner of the Immigration and Naturalization Service by October 1, 1987.

During the implementation phase, the Committee also intends for the Comptroller General to monitor and analyze the implementation of such system, and report to the Congress and the respective program Secretaries by April 1, 1989 on such implementation, and to include any recommendations for changes in the system which may be appropriate.

Waiver authority in certain cases

The Committee amendment is intended to provide the various respective program Secretaries with the authority to waive the requirements of the computer verification implementation under certain circumstances. In fact, the program Secretaries are required to report to the appropriate Committees of the House and Senate on whether the application of the SAVE program to their programs is cost effective and whether there should be a waiver prior to the implementation of SAVE for their programs. The respective secretaries would be permitted to waive the requirements of this section if persuaded that the administering agency has in effect an alternative system of immigration status verification which is as effective and timely as that required under this section, or if the costs of administering the required system would exceed the estimated savings in program benefits. The waivers could be by program, state or geographic region, as appropriate.

The Committee is concerned that the computer data base may have serious flaws and would like to provide flexibility to the various Secretaries in implementing a verification system which would serve the intent of the program in benefit delivery. The Committee is further concerned that under certain circumstances the implementation and operation of the required verification system may not be cost effective. In examining a program to determine whether

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SAVE should be implemented the appropriate Secretaries must include in their determination an estimate of the number of alien claimants in relation to the total number of claimants, the savings in benefit expenditures which can reasonably be expected from implementation, and the labor and non labor costs of administering the verification system. The Committee believes that all cost estimates should utilize averages for benefit levels and duration periods and should not assume receipt of maximum benefit levels.

Fair hearing process

Section 121 of H.R. 3810, as reported by the Judiciary Committee, provides for certain safeguards against wrongful denial of benefits, including the right to a hearing for individuals seeking education assistance in the form of grants, loans or work assistance if they are denied benefits based upon ineligible alien status. While benefit programs administered through the various federal departments and corresponding agencies must provide due process which would meet the test of the Administrative Procedures Act, institutions of higher education are not subject to those requirements.

The Education and Labor Committee, therefore, amended section 121 to provide for minimal requirements for a fair hearing process which institutions must follow. The institution must provide the individual with written notice of a determination and the opportunity to appeal that determination. The appeal shall be in the form of a hearing. Upon a timely request by the individual, the institution must provide a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status. Not later than 45 days after the request for the hearing, the institution must notify the individual in writing of the decision on the appeal of the determination.

Loan guaranty protections

Currently, and educational assistance loan is accompanied by a guaranty. The guaranty is necessary in order that lending institutions issue the loan at reduced interest rates. The Committee amended section 121 to provide that if a guaranty is made for a loan and at the time the guaranty is entered into the alien status verification has been made, that amounts paid under that loan are subject to that guaranty. However, if a subsequent determination of unsatisfactory immigration status is made with respect to that individual, the institution shall instruct the entity making the loan to cease further payments under the loan, but the guaranty shall not be voided or otherwise nullified with respect to the prior payments made before the date the entity receives such notice.

TITLE IV OF HIGHER EDUCATION ACT

AMENDMENT NO. 6

The sixth amendment adopted by the Committee relates to the bill's provisions which declare that newly legalized aliens will not be entitled to benefits under certain public assistance programs. Several exceptions have been identified, largely as a result of action taken by the Committee on Education and Labor during con-

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sideration of H.R. 1510 by the 98th Congress. Based upon an exchange of letters in 1982 between then Chairman Perkins and Assistant Attorney General McConnell, and amendment was drafted that listed several specific programs from which newly legalized aliens were not disqualified. School Lunch, Child Nutrition, Head Start and JTPA were among those listed. The language of that amendment was included in H.R. 3810 as reported by the Judiciary Committee.

That language, however, identified only subparts 4 and 5 of Part A of title IV of the Higher Education Act of 1965 as among the exceptions to disqualification. That would make newly legalized aliens eligible only for TRIO and HEP and CAMP programs such as outreach and counseling. The Committee's amendment now removes that limitation and will make newly legalized aliens eligible if the eligibility requirements of the underlying statute are otherwise met.

State Legalization Assistance

AMENDMENT NO. 7

The seventh amendment, offered by Congressman Goodling, is an amendment to section 204, the State Legalization Assistance section. This amendment had three major provisions. First, it made a cross reference to the provisions of the Emergency Immigrant Education Act, P.L. 95-561, for the purpose of administering and making payments under the educational assistance portion of this bill. Under this amendment, the provisions and definitions of the Emergency Immigrant Education Act will apply to this new assistance, except that the new assistance will be targeted on eligible legalized aliens as defined in H.R. 3810. The effect of this provision is to place a $500 cap on the Federal contribution for each eligible child or adult. In addition, the Emergency Immigrant Education Act will provide an already existing administrative structure for the provision of this assistance.

Second, the amendment clarifies how funds will be divided between public assistance and education assistance authorized by section 204 in the event appropriations are inadequate to fund the full costs of this assistance. Funds would be allocated among the States for these two categories of assistance on a pro rata basis until funding reached 40 percent of the full reimbursement of $500 for each eligible alien. After this 40 percent level is reached, public assistance could receive the remaining appropriations, so long as education does not fall below 40 percent.

Third, the amendment allows for the carry-over of unobligated appropriations for one fiscal year. Finally, the Goodling amendment prohibits the use of funds under section 204 to reimburse costs to the extent that these costs are otherwise reimbursed or paid for under other Federal programs.

A perfecting amendment by Congressman Martinez clarifies the distribution and use of the educational assistance for adult legalized aliens. First, the amendment permits these adult services to be provided by the State educational agency through local educational agencies and other public and private nonprofit organizations of

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demonstrated effectiveness. The Martinez amendment also specifies that services provided to adults under this section may include English language and other programs designed to enable such aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act.

The Committee also recognizes the integral role played by local community and junior colleges in providing English language instruction and other literacy programs to eligible aliens, and as such, the Committee includes community and junior colleges as eligible service providers for the adult educational services under this bill.

In determining the number of eligible legalized aliens for purposes of receiving funds for educational services authorized by section 204, educational agencies or, in the case of adult services, other eligible organizations, will provide data and estimates to the Secretary of Education as provided in section 606(c) of the Emergency Immigrant Education Act. To assist these agencies in complying with this provision, the Committee encourages the INS to provide educational agencies with listings of eligible legalized aliens (as defined under the bill) residing in their school attendance areas. In determining the numbers of such aliens for purposes of payments, the Secretary is also encouraged to accept INS data provided by educational agencies to comply with this provision.

COMMITTEE ACTION

H.R. 3810, as reported by the House Committee on Judiciary, was sequentially referred to the House Committee on Education and Labor for consideration of those provisions falling within its jurisdiction. The full Committee on Education and Labor met July 31, 1986, and by a voice vote ordered reported the bill H.R. 3810, as amended.

COSTS

The Committee has received a cost estimate on the bill from the Congressional Budget Office which the Committee adopts as the appropriate estimate at this time as to the cost of the legislation. This cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 1986.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared this cost estimate for amendments to H.R. 3810, the Immigration Control and Legalization Amendments Act of 1986, as ordered reported by the House Committee on Education and Labor on July 31, 1986. H.R. 3810 was ordered reported by the House Committee on the Judiciary on June 25, 1986.

This estimate provides the spending impacts of the Committee on Education and Labor amendments to H.R. 3810. The original CBO estimate for H.R. 3810, as reported by the Committee on the Judici-

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ary, is attached to provide background information. The table below shows the original estimate of H.R. 3810's impact on spending, the Committee on Education and Labor changes to spending, and the resulting estimated spending, revenue, and federal deficit totals for the bill as amended.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Judiciary bill:						
Required budget authority/estimated authorization level	434	655	1,170	1,885	2,201	2,277
Estimated outlays	(1)	480	819	1,779	2,348	2,475
Education and Labor amendments:						
Required budget authority/estimated authorization level	(1)	−56	−312	−410	−549	−607
Estimated outlays	(1)	−1	−49	−259	−392	−521
Total spending						
Required budget authority/estimated authorization level	434	599	858	1,475	1,652	1,670
Estimated outlays	(1)	479	770	1,520	1,956	1,954
Estimated revenues	(1)	70	166	54	54	(1)
Net budget impact: Estimated net increase or decease (−) in the deficit	(1)	409	604	1,466	1,902	1,954

[1] Less than $500,000.

The Committee on Education and Labor reported a number of amendments to H.R. 3810, only one of which is estimated by CBO to affect spending significantly.

The provisions covering payments to states for educational assistance were modified in a manner that would lower authorized payments. Under H.R. 3810, authorized payments were not limited, and CBO's estimate assumed that payments would cover the full education costs of the legalized alien children. Under the Committee's amendment, payments for any child and for any adult taking adult education courses would be limited to $500 a year. The table below shows CBO's estimates of these education payments to states under H.R. 3810 and under the Committee's amended language, as well as the savings resulting from the amendment.

PAYMENTS TO STATES FOR EDUCATION COSTS

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Judiciary bill:					
Estimated authorization level	70	516	690	717	754
Estimated outlays	1	63	423	653	712
Education and Labor amendment:					
Estimated authorization level	14	204	280	168	147
Estimated outlays	(1)	14	164	261	191
Difference:					
Estimated authorization level	−56	−312	−410	−549	−607
Estimated outlays	−1	−49	−259	−392	−521

[1] Less than $500,000.

Payments to states to reimburse costs of legalized alien children in elementary and secondary schools, and to some degree payments

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for adult education, result in savings to state and local governments because they are already paying for such education. Thus, this amendment, by reducing these payments to states, would lower state and local government savings.

The Committee also amended the System for Alien Verification of Eligibility (SAVE), which would require a number of federal benefit programs to check with the Immigration and Naturalization Service as to the resident status of aliens applying for program benefits. These amendments would permit a program or jurisdiction not to use SAVE if waivers were granted by Department Secretaries. Waivers could be given if alternative verification systems were found to be as effective or if the administrative costs of SAVE exceeded any estimated savings. Without knowing more about SAVE and the extent to which waivers might be granted, the CBO estimate assumed that savings and costs would be approximately offsetting. If the cost effectiveness of SAVE could be measured accurately and waivers granted accordingly, however, these amendments would be likely to result in federal budgetary savings.

An amendment to the section concerning unfair immigration-related employment practices would make a number of procedural changes but would not significantly alter the costs of this provision. An amendment to Section 101, regarding unlawful employment of aliens, would delete the criminal penalty for employers repeatedly violating this provision and instead would increase civil penalties. CBO is unable to estimate the penalties that would be collected as a result of H.R. 3810 or of this amendment. The remaining amendments are estimated to have no significant effect on the costs of H.R. 3810.

If you wish further details on this estimate, please call me or have your staff contact Janice Peskin.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 1986.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3810, the Immigration Control and Legalization Amendments Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, JULY 15, 1986

1. Bill number: H.R. 3810.

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2. Bill title: Immigration Control and Legalization Amendments Act of 1986.

3. Bill status: As ordered reported by the House Committee on the Judiciary, June 25, 1986.

4. Bill purpose: H.R. 3810 makes major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A of this title makes the employment of unauthorized aliens unlawful and establishes a special counsel to investigate and prosecute immigration-related unfair employment practices. Part B authorizes additional appropriations for the Immigration and Naturalization Service (INS) and the Executive Office of Immigration Review (EOIR) for fiscal years 1986 and 1987 to carry out the provisions of this act and calls for increased enforcement and adjudication activities. This part also makes it unlawful to transport any unauthorized alien into the United States and authorizes an appropriation of $35 million for an immigration emergency fund. Part C requires a system to verify the immigration status of aliens applying for benefits under certain programs, and establishes procedures and provides for federal reimbursement of states' costs to implement and operate this system.

Title II of the bill governs the legalization of unauthorized aliens already in the country. It empowers the Attorney General to adjust the status of unauthorized aliens to that of lawfully admitted aliens eligible for temporary residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to January 1, 1982, and have been residing here continuously since then. After one year in temporary status, the Attorney General can adjust their status to that of permanent resident. In addition, it limits for a period of five years federal program benefits for which the authorized aliens granted resident status are eligible and authorizes appropriations for fiscal years 1987 through 1991 to reimburse states for the costs of providing public assistance to legalized aliens and educational services to legalized alien children.

Title III reforms existing law regarding legal immigration. Part A amends those provisions of the Immigration Act relating to nonimmigrant workers (H–2 workers), provides legal resident status to certain agricultural workers, amends the procedures for obtaining approval of H–2 petitions, allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification, and authorizes a program designed to recruit domestic workers for temporary labor. Part B changes certain numerical limitations, changes requirements for foreign students, amends the immigration laws regarding C–4 special immigrants, and establishes a visa waiver pilot program for certain visitors.

Titles IV and VI require a number of reports to the Congress, and Title V provides for assistance to state and local governments for the costs of incarcerating illegal aliens and certain Cuban nationals.

5. Estimated cost of the Federal Government:

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[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Direct spending provisions:						
Required budget authority:						
Function 550		1	44	184	261	277
Function 570						
Function 600		(1)	29	120	154	171
Function 650						
Estimated outlays:						
Function 550		1	44	184	261	277
Function 570		(1)	(1)	(1)	5	16
Function 600		8	115	257	321	337
Function 650		(1)	3	18	38	55
Amounts subject to appropriation action:						
Estimated authorization level:						
Function 500		25	25	26	27	27
Function 600		72	630	1,132	1,332	1,395
Function 750	434	557	442	423	427	407
Estimated outlays:						
Function 500		25	25	26	27	27
Function 600		4	177	866	1,268	1,352
Function 750		442	455	428	428	411
Total spending: Required budget authority/estimated authorization level	434	655	1,170	1,885	2,201	2,277
Estimated outlays		480	819	1,779	2,348	2,475
Estimated revenues		70	166	54	54	
Net budget impact: Estimated net increase or decrease (−) in the Deficit		410	653	1,725	2,294	2,475

[1] Less than $0.5 million.

Basis of estimate:

Control of Illegal Immigration (Functions 550, 600 and 750).—Title I of the bill authorizes additional appropriations for the INS of $422 million in fiscal year 1986 and $419 million in fiscal year 1987, and for the Executive Office of Immigration Review of $12 million in 1986 and $15 million in 1987. The funds authorized for the INS are intended to provide improved services, enhanced community outreach and inservice training of personnel. This authorization would provide for enhanced enforcement, including enforcement of employer sanctions, and additional processing of applications and adjudication, primarily resulting from the legalization and agricultural worker programs outlined by the bill. Because this estimate assumes enactment on approximately October 1, 1986, it assumes that none of the funds authorized for fiscal year 1986 will be appropriated, and therefore those authorizations will result in no outlays. While this title does not authorize appropriations for those agencies after 1987, CBO estimates that the additional activities required by this bill will result in additional costs of approximately $220 million in 1988, declining to $150 million in 1991.

This title also requires the appointment of a special counsel within the Department of Justice for Immigration-Related Unfair Employment Practices. The special counsel would be responsible for receiving and investigating complaints of such practices and bringing them, when appropriate, before specially trained administrative law judges. Based on information from the Immigration and

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Naturalization Service and the National Labor Relations Board, CBO expects this process to cost $2 million in 1987 and 1988 and $3 million in later years. The bill does not, however, authorize appropriations for this activity. Also required would be a system to validate the Social Security account numbers of all individuals employed in the United States. Employers would be required to submit each account number and receive a validation code. CBO estimates that approximately 80 million numbers would be submitted for validation each year. Based on information from the Social Security Administration, CBO estimates that this system would cost about $130 million each year, beginning in 1988, with slightly higher costs in the first year. Both of these estimates are highly uncertain.

Title I authorizes an appropriation of $35 million for an immigration emergency fund to be used for increased enforcement of the nation's immigration laws and for providing assistance to states and localities facing major immigration problems. CBO does not show an increase in outlays as a result of this fund, because spending is prohibited unless the President declares an immigration emergency, and it is impossible to predict when, or whether, such a declaration would be made.

The bill requires that the immigration status of aliens applying for a number of federal benefit programs be verified with the INS beginning no later than October 1, 1988. All state costs would be fully reimbursed by the federal government. CBO estimates that this provision would have no significant budgetary effect in 1987 or in 1988, would reduce outlays by $25 million in 1989, and by $20 million a year thereafter. These savings are very uncertain. The only tests of the verification system have been for the Unemployment Compensation program in a few states, where savings were found to be modest. The CBO estimate for the Unemployment Compensation program is based on these test results. Savings for the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs are based on the number of cases found to be in error because of alien status, as reported in the quality control data systems. This estimation procedure underestimates savings. Costs are based on information provided by the INS and assume in most cases a statewide system of checking. These costs are underestimated because some states with country-run programs would have higher costs. Also, there is expected to be considerable adjudication, because the INS data are out-of-date and incomplete; this cost cannot be estimated.

The following table summarizes the costs of Title I.

ESTIMATED BUDGET IMPACT—CONTROL OF ILLEGAL IMMIGRATION (FUNCTIONS 550, 600, AND 750)

[By fiscal year, in million of dollars]

	1986	1987	1988	1989	1990	1991
Authorization:						
Immigration and Naturalization Service [1]	422	419				
Executive Office of Immigration Review [1]	12	15				
Immigration emergencies		35				
Status verification [2]		([3])	([3])	−15	−10	−10
Other estimated costs [4]		2	351	317	311	286

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ESTIMATED BUDGET IMPACT—CONTROL OF ILLEGAL IMMIGRATION (FUNCTIONS 550, 600, AND 750)—Continued

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Total estimated authorizations	434	471	351	302	301	276
Estimated outlays		371	254	297	292	270

[1] It is assumed that enactment of this bill will not allow time for funds to be appropriated in fiscal year 1986; therefore, no outlays are shown for the 1986 authorizations.

[2] The bill authorizes such sums as may be necessary for the INS. This estimate also includes CBO's estimate of costs and savings in functions 550 and 600.

[3] Less than $0.5 million.

[4] This amount reflects estimated costs for which no authorizations are provided in the bill. These costs are largely for INS enforcement and processing activities after 1987, and for the required system for validating an individual's Social Security number.

Legalization (Functions 550, 570, 600, and 650).—By legalizing some unauthorized aliens currently in the United States, Title II would increase federal outlays in functions 550 (Health, including Medicaid), 570 (Medicare), 600 (Income Security), and 650 (Social Security). First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after five years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or have resident status. Because the provisions of the bill preclude most aliens granted resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of five years, federal outlays for these programs generally do not begin until fiscal year 1992, beyond our estimating period. An exception is made in the bill for the aged, blind, and disabled and for medical assistance provided to children under 18 years of age, pregnant women, and those in need of emergency services. Hence, the cost estimate does show increased federal outlays for SSI, Medicaid, and Food Stamps beginning in fiscal year 1987. In addition, in other programs that are not based on "financial need," such as Disability Insurance (DI), some legalized aliens who would not have collected benefits would now be expected to do so.

Second, Title II provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1987 through 1991 to reimburse states for 100 percent of the costs of public assistance to eligible legalized aliens. Aliens granted resident status are eligible for five years. The bill also authorizes payments over the same five-year period to state education agencies to assist in providing educational services for the legalized alien children in elementary and secondary schools.

Added federal program outlays as a result of legalizing unauthorized aliens under Title II of the bill as shown in the table below. These added outlays are estimated to be $8 million, $272 million, $1,143 million, $1,646 million, and $1,777 million in fiscal years 1987 through 1991, respectively.

This estimate is very uncertain, particularly because of the three factors discussed below. First, this estimate includes federal outlays for the grants to states that are large enough to cover the full estimated costs to states for public assistance to the legalized aliens and education services for the legalized alien children. Less than

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the full costs, however, might be appropriated. Second, this estimate depends importantly on the number of unauthorized aliens in the United States, for which little hard evidence exists. It has been generally accepted that there were 3 to 6 million unauthorized aliens in the United States in the late 1970s. The CBO estimate uses 4.5 million aliens in 1977, the midpoint of the range. Even less is known about how the numbers of unauthorized aliens in the United States may have changed in recent years, although anecdotal evidence indicates there has been some net inflow. Based on conversations with persons knowledgeable about the unauthorized alien population, CBO assumes a net increase of 150,000 in each year beginning in 1980. In 1986, then, CBO assumes that there are 5.6 million unauthorized aliens in the United States.

Of the 5.6 million unauthorized aliens, CBO estimates that 40 percent have resided continuously in the United States since January 1, 1982, making them eligible for legalization under this bill. This figure is based on percentages from Immigration and Naturalization Service (NS) studies, which have been adjusted upward to reflect the assumption that some unauthorized aliens are aware of the possibility of legalization because of legislative activity in recent years. Among those eligible, we assume—again based on conversation with experts—that approximately 60 percent would apply for and be granted resident status. The resulting number of unauthorized aliens who would be granted resident status is estimated to be 1.4 million.

Finally, the number of legalized aliens who would qualify for government assistance programs is uncertain. In large part, this reflects a lack of data on the economic and demographic characteristics of unauthorized aliens—for example, their employment status and wages or their age and marital status. In developing the estimates of numbers of legalized aliens who would receive benefits from government programs, CBO assumes that the unauthorized aliens would have to show at the time of their applicant for residency that they had not been nor would they be likely to be "public charges," as specified in Section 212 of the Immigration and Nationality Act. However, the bill would allow resident status to an unemployed alien if that alien could demonstrate a history of employment without reliance on public cash assistance. Thus, at the time the aliens would become residents, most would presumably be working. Over time, however, they could be expected to resemble the U.S. population as to receipt of benefits from entitlement programs. By 1990, CBO assumes that the percentage of unauthorized aliens receiving government benefits would resemble that of the U.S. population for similar age, sex, ethnic origin, and income groupings. In the interim years, CBO assumes that a growing fraction of potential eligibles would in fact receive benefits; 5 percent in 1987, 30 percent in 1988, and 75 percent in 1989.

In addition to the general basis of these estimates, each individual program estimate entailed specific procedures and assumptions. The details for each program are discussed below.

The SSI program provides benefits to aged, blind, and disabled persons. Benefit levels are set by the federal government, which pays the full cost of the program, although states may supplement federal benefits and most do. Under this bill, legalized aliens would

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be eligible to receive SSI upon confirmation of residency status. Costs to the federal government are estimated to rise from an insignificant amount in 1987 to $116 million in 1991. CBO's cost estimate is based on a recipiency rate of 0.90 percent of the alien population for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the population. The aliens are estimated to receive the full SSI basic benefit, or $4,131 in 1987.

Food stamps are issued to eligible low-income households. Benefits (and approximately one-half of state administrative expenses) are funded by the federal government. As with AFDC, most legalized aliens could not receive food stamps until 1992, although legalized aliens who received SSI could also receive food stamps. Food stamp costs are estimated to be insignificant in 1987, rising to $6 million in 1991. This figure is based on the estimated number of aliens added to the SSI rolls and a food stamp participation rate of 45 percent, the estimated current rate for SSI recipients. Average annual benefits per person in 1987 are estimated to be $444.

The Unemployment Compensation program provides weekly cash benefits to workers who are involuntarily unemployed and who have had at least a moderate amount of work experience during a one-year period prior to losing their jobs. Under this bill, Unemployment Compensation costs for newly legalized alien workers are estimated to rise from $3 million in 1987 to $115 million in 1991. This estimate is based on several assumption for newly legalized alien workers. Consistent with recent labor force data on young Hispanics, CBO assumes that 80 percent of these workers would participate in the labor force, a higher rate than the average of the U.S. population. Because most probable work in service industries, which are less prone to cyclical unemployment, and because even-low-wage jobs in this country probably appear attractive when compared to those in the country of origin, CBO assumes that the newly-legalized population would have unemployment rates one percentage point lower than those in effect for the rest of the U.S. population. Further, assuming, as some evidence indicates, that these individuals' earnings are about 60 percent of those of comparable U.S. production or nonsupervisory workers (and assuming a 50 percent wage replacement rate), CBO estimates that the average weekly benefit amount for these workers would be about $97 in 1987, one-fourth lower than that for the remainder of the population.

The Disability Insurance (DI) program covers persons who are totally disabled (whose disability is expected to last at least 12 months or result in death) and who have sufficient work histories in covered employment. Costs in DI of the legalized aliens are estimated to rise from an insignificant amount in 1987 to $54 million in 1991. Because the evidence indicates that unauthorized aliens are relatively young on average, they would be less likely to be disabled than the U.S. population as a whole. Also, because they have been in the United States for relatively short periods of time, they might not qualify for DI, which requires for most workers covered

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earnings during 20 out of the last 40 calendar quarters. For all of these reasons, their DI recipiency rate would be less than that of the U.S. population; CBO estimates the rate to be about 0.1 percent in 1987, with this rate rising to about 0.7 percent in 1991. Their benefit levels would also be less, reflecting lower than average wages and shorter work histories. The CBO estimates average benefits to be about $4,300 in 1991.

The Medicaid program provides health care coverage to recipients of AFDC and SSI and to others who may qualify as "medically needy." Under the bill, Medicaid would be provided to aliens on SSI and to children, pregnant women, and emergency cases who could meet Medicaid's eligibility criteria. Costs are estimated to rise from $1 million in 1987 to $231 million in 1991. Medicaid beneficiaries are based on numbers of aliens estimated to receive SSI and numbers estimated to receive AFDC who would be children, pregnant women, or in need of emergency services, with some increase for the medically needy. Benefits are current averages per SSI or AFDC enrollee, adjusted to 1987 and later.

Costs in the Medicare program, which provides health care coverage to the aged and disabled covered by Social Security, would rise to $16 million by 1991. These costs would be for those aliens who would receive DI.

Reimbursements to states for public assistance costs are estimated to cost $2 million in 1987 and $527 million in 1991. These reimbursements are based on costs in state and local General Assistance (GA) programs. These programs are fully-funded by states and localities and provide benefits to low-income persons and families who do not qualify for the federally-funded cash welfare programs. GA provides both cash payments and medical coverage. Two groups of aliens would qualify for GA: those who would never be eligible for federal welfare programs (for example, low-income working two-parent families with children, and non-aged, non-disabled couples or single persons without children) and those who would be made ineligible for AFDC by the bill for a period of five years.

Among the first group, CBO estimates that 1.3 percent of the aliens would receive an average annual cash GA benefit of $1,725 in 1987. This estimate is based on current recipiency rates and benefit levels in GA programs. Among the second group, CBO's estimate for families who would have qualified for AFDC is based on the assumption that 52 percent of the aliens given resident status would be married men and women, reflecting demographic data on unauthorized aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. The average annual cash benefit for these alien families is estimated to be $2,150 in 1987. These aliens would also receive medical GA. Their average annual medical benefits are estimated to be $715 in 1987.

Reimbursements to states for education services are estimated to cost $1 million in 1987 and $712 million in 1991. This cost assumes a full appropriation of funds to cover total costs of educating the eligible alien children. Of the total legalized alien population, 15

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percent—or about 200,000—are estimated to be children of school age. Average per pupil costs were $3,086 during the 1983–1984 school year, the latest data available. CBO assumes that this 1983–1984 per pupil cost would be used in calculating reimbursements to the states in 1987. This is consistent with current procedures in Chapter I education aid to disadvantaged children. Outlays reflect a spending pattern of 2 percent in the first year, 77 percent in the second year, and 21 percent in the third year.

The table on the following page summarizes the estimated costs associated with Title II.

Agricultural Worker Provisions (Function 500, 550, 600, and 650).—Title III of the bill provides for the availability of temporary agricultural workers and for the legalization of certain illegal alien workers recently employed in agriculture. CBO estimates the agricultural worker provisions would increase federal outlays by $56 million in 1987, rising to $324 million by 1991.

The bill authorizes such sums as may be necessary to enable the Department of Labor (DOL) to make determinations and issue certifications under a new H-2A worker program, targeted at agriculture. The H-2 worker program allows foreign workers to enter the United States temporarily to work in jobs for which employers cannot find domestic workers. In making this estimate, it is assumed that the combination of employer sanctions and a strengthened INS would act as effective deterrents to the hiring of illegals to perform agricultural labor. It is further assumed that the H-2A worker program would expand to fill the otherwise unmet demand for agricultural labor, thereby increasing the administative costs of DOL.

According to staff from the Department of Agriculture (USDA), if employer sanctions were effectively enforced, growers would need between 250,000 and 500,000 guest workers. Because the CBO assumes that about 250,000 illegal alien workers in agriculture would be legalized under the special agricultural worker provision discussed below, the number of H-2A workers could range up to 250,000 guest workers. The DOL is currently receiving about 800 applications per year for H-2 agricultural workers, and each application requests an average of 25 workers. Administrative costs were about $3 million in 1985, or $3,750 per application, for the agricultural part of the H-2 worker program, and they are estimated to increase by about 5 percent per year.

Currently, those illegal immigrants who work in agriculture are located primarily in the West and Southwest, while most H-2 workers are employed in the East. Since western agricultural concerns tend to be far larger than eastern, it is assumed that future applications would be for about 40 workers on average. Using a projected cost per application of about $4,100 in 1987, CBO estimates that 1987 administrative costs would be $13 million. This figure is based on an estimated 3,125 applications: 125,000 guest workers—the midpoint of the estimated range noted above—and an estimated 40 workers per application.

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ESTIMATED BUDGET IMPACT—LEGALIZATION (FUNCTIONS 550, 570, 600, AND 650)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
SSI (function 600):					
Required budget authority	(1)	23	83	103	116
Estimated outlays	(1)	23	83	103	116
Food stamps (function 600):					
Estimated authorization level	(1)	1	4	6	6
Estimated outlays	(1)	1	4	6	6
Unemployment compensation (function 600):					
Required budget authority					
Estimated outlays	3	47	88	116	115
Disability insurance (function 650):					
Required budget authority					
Estimated outlays	(1)	3	18	38	54
Medicaid (function 550):					
Required budget authority	1	39	156	218	231
Estimated outlays	1	39	156	218	231
Medicare (function 570):					
Required budget authority					
Estimated outlays	(1)	(1)	(1)	5	16
Reimbursement of State public assistance costs (function 600):					
Estimated authorization level	2	96	370	507	527
Estimated outlays	2	96	370	507	527
Payments to States for education costs (function 600):					
Estimated authorization level	70	516	690	717	754
Estimated outlays	1	63	423	653	712
Subtotal: Direct spending provisions:					
Required budget authority	1	62	239	321	347
Estimated outlays	4	112	345	480	532
Subtotal: Amounts subject to appropriation action:					
Estimated authorization level	72	613	1,064	1,230	1,288
Estimated outlays	4	160	798	1,166	1,245
Total:					
Estimated authorization level/ required budget authority	73	675	1,303	1,551	1,635
Estimated outlays	8	272	1,143	1,646	1,777

[1] Less than $0.5 million.

In addition, the bill requires the federal government to establish a program to (a) recruit domestic workers to perform services that might otherwise be performed by temporary foreign nonimmigrant laborers, and (b) monitor the terms and conditions under which temporary agricultural workers are employed in the United States. A total of $10 million per year beginning in 1987 is authorized for these purposes.

The estimated budget impact of the temporary agricultural worker program in H.R. 3810 is summarized in the following table.

ESTIMATED BUDGET IMPACT—TEMPORARY AGRICULTURAL WORKERS (FUNCTION 500)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
H–2A Worker Program:					
Estimated authorization level	13	13	14	15	15
Estimated outlays	13	13	14	15	15
Domestic worker recruitment:					
Authorization level	10	10	10	10	10
Estimated outlays	10	10	10	10	10

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The bill's provision for special agricultural workers would establish legal status for agricultural workers who could demonstrate that they had worked at least 60 days in agricultural employment during the period from May 1, 1985 to May 1, 1986. Since these workers would be provided with legal resident status, federal outlays for entitlement program benefits would rise by an estimated $5 million in 1987 and $295 million in 1991.

Workers covered under the special agricultural workers provision are estimated to total about 250,000. This figure was derived by adjusting the number of farm workers upward for turnover during the year and downward for the 60-day work requirement. Further, it is assumed that about 25 percent of farm workers are illegal aliens and that 60 percent would come forward to apply for and be accepted as legal residents. CBO was unable to determine whether the provisions designed to allow additional special agricultural workers beginning in 1990 in the event of a worker shortage would increase the number granted resident status in the future.

Most of the additional entitlement spending would occur in means-tested benefit programs such as AFDC, Medicaid, SSI, and Food Stamps, although the program with the largest increase would be Unemployment Compensation. Unemployment Compensation benefits are estimated to increase from $5 million in 1987 to $61 million by 1991. These estimates are based on the assumptions that unemployment rates of agricultural workers are about 75 percent higher than the national average, agricultural wages are lower than overall average wages, and that the average weekly benefit would be about $97 in 1987. AFDC costs are expected to increase as the number of recipient families is estimated to rise by about 14,000 persons by 1990. Medicaid outlays associated with the increases in AFDC and SSI beneficiaries are estimated to rise by about $5 million in 1988 and $53 million by 1991.

Title III also specifies that a commission would be established that would examine the impacts of the special agricultural worker provisions on wages, working conditions, and issues. The CBO estimates that the costs of the commission, including personnel and other non-labor expenses, would be about $2 million annually over the next five years.

The table on the following page summarizes the estimated costs associated with the special agricultural worker provisions.

Reports to the Congress (Function 750).—Title IV requires the preparation of a number of Presidential reports. These include a comprehensive triennial report on admissions under the Immigration and Nationality Act and the impact of those admissions, reports on unauthorized alien employment and discrimination in employment, biennial reports on the implementation of the temporary agricultural worker program, two reports on the legalization program and its impact, and a report on the visa waiver pilot program. Title VI requires the Attorney General to prepare a report for the Congress on the resources required by the INS to carry out

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its enforcement and service responsibilities. The cost of these reports is assumed to be included in the amounts authorized for the INS.

In addition, the bill requires the Civil Rights Commission to monitor the implementation and enforcement of the employer sanctions provisions and investigate any allegations of unlawful discrimination due to these provisions. The Commission is to report as to whether implementation and enforcement of these provisions has resulted in a pattern of unlawful discrimination. Implementation of this provision is expected to cost approximately $1 million each year.

State and Local Assistance for Incarceration of Illegal Aliens and Certain Cuban Nationals (Function 750).—Title V would require the Attorney General to reimburse state and local governments for the costs of imprisoning these aliens and Cuban nationals convicted of felonies and for their pre-trial and post-trial detention. Appropriations are authorized for such sums as are necessary to carry out this provision. CBO estimates that reimbursements would be required for approximately 6,000 prisoners at an average cost of about $14,000 per prisoner-year in 1987, rising to $17,000 per year by 1991.

ESTIMATED BUDGET IMPACT—INCARCERATION COSTS (FUNCTION 750)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	85	90	95	100	105
Estimated outlays	70	90	95	100	105

Revenues.—CBO assumes that the Attorney General would collect a fee of $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions in Title II. CBO estimates that 1.8 million aliens would apply for legal temporary residency—0.6 million in 1987 and 1.2 million in 1988. In 1988 through 1990, the 1.4 million aliens granted temporary residency would apply for permanent residency. The special agricultural workers would also apply for legalization during 1987 and 1988: an estimated 0.1 million in 1987 and 0.2 million in 1988. With a fee of $100 per application, CBO estimates that the government would receive a total of $344 million over the four years from legalization application fees.

ESTIMATED BUDGET IMPACT—SPECIAL AGRICULTURAL WORKERS (FUNCTIONS 500, 550, 600, and 650)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
AFDC (function 600):					
Required Budget Authority	(1)	6	25	35	36
Estimated Outlays	(1)	6	25	35	36

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ESTIMATED BUDGET IMPACT—SPECIAL AGRICULTURAL WORKERS (FUNCTIONS 500, 550, 600, and 650)—Continued

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
SSI (function 600):					
Required Budget Authority	(1)	(1)	16	20	23
Estimated Outlays	(1)	(1)	16	20	23
Food stamps (function 600):					
Estimated authorization level	(1)	5	23	32	33
Estimated Outlays	(1)	5	23	32	33
Unemployment compensation (function 600):					
Required Budget Authority					
Estimated Outlays	5	39	59	61	61
Disability insurance (function 650):					
Required Budget Authority					
Estimated Outlays	(1)	(1)	(1)	(1)	1
Medicaid (function 550):					
Required Budget Authority	(1)	5	35	50	53
Estimated Outlays	(1)	5	35	50	53
Reimbursement of State public assistance costs (function 600):					
Estimated authorization level	(1)	12	59	84	88
Estimated Outlays	(1)	12	59	84	88
Agricultural worker commission (function 500):					
Estimated authorization level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2
Subtotal: Direct spending provisions:					
Required Budget Authority	(1)	11	76	105	112
Estimated Outlays	5	50	135	166	174
Subtotal: Amounts subject to appropriation action:					
Estimated authorization level	2	19	84	118	123
Estimated Outlays	2	19	84	118	123
Total:					
Estimated authorization authority level/required Budget authority	(1)	30	160	222	235
Estimated Outlays	5	69	219	284	297

[1] Less than $0.5 million.

In addition, the bill allow the Secretrary of Labor to impose a fee on employers importing temporary agricultural workers to recover the costs of processing applications for certification. It has not yet been determined whether the Secretary of Labor would impose such a fee and CBO is unable at this time to estimate how much money would be collected as a result of this fee. Also, the bill permanently exempts employers from paying Federal Unemployment Tax Act taxes on wages paid to H-2 agricultural workers. This provision has a negligible revenue effect.

Part B of title I increase penalties for immigration-related violations and Part A outlines employer penalties for illegal employment of unauthorized aliens. No estimate can be made of the fines that would be collected by the federal government as a result of these sections.

In addition to the above effects on federal revenues, there are potential effects on individual income tax revenues and social insurance contributions. Revenues would increase if some of the aliens who are not having taxes withheld from their wages at present were to have taxes withheld as a result of this legislation. Revenues would decrease if aliens who currently have taxes withheld

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and are entitled to refunds that they do not claim would claim refunds as a result of this bill. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on these revenue sources.

ESTIMATED REVENUE EFFECT

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Revenues from application fees	70	166	54	54	

6. Estimated cost to State and local governments: By legalizing certain unauthorized aliens currently residing in the United States, this bill could have sizable effects on state and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially- or fully-funded by states and localities. When legalized, there aliens would be eligible for such programs—immediately in the case of state programs and after five years in the case of programs financed by federal and state governments jointly. The special agricultural workers would be eligible for federal and state programs immediately. During the estimation period, however, states and localities would have no added costs under CBO's assumptions. They would, in fact, experience budgetary savings to the extent funds were appropriated to cover their public assistance, education, and imprisonment costs, as authorized in the bill. After 1991, however, when the public assistance and education reimbursements were no longer available, states and localities would experience increase costs.

As shown in the table, public assistance costs would be zero to the extent the authorized reimbursements covered them in full, as CBO has assumed. The full amounts of any reimbursements for education services are estimated to result in state and local savings. States were required to educate illegal alien children by the Supreme Court in Plyler vs. Doe (June 15, 1982). Finally, any reimbursements for costs of incarcerating illegal aliens currently borne by states and localities would also result in budgetary savings.

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Public assistance					
Education assistance	−1	−63	−423	−653	−712
Assistance for imprisonment costs	−70	−90	−95	−100	−105
Total estimated State and local outlays	−71	−153	−518	−753	−817

A number of factors made these estimates uncertain. For purposes of this estimate, it is assumed that funds for reimbursements to states would be appropriated in full. If less than this amount were appropriated, states and localities would have lower savings or even experience budgetary costs. On the other hand, with a full appropriation, savings to states and localities would be higher than

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CBO has estimated. Certain current expenditures by states and localities would be covered under the grant: free health care provided to unauthorized aliens in public hospitals, assistance to Cuban and Haitian entrants, and any public assistance being received illegally by unauthorized aliens. However, CBO does not have sufficient information to estimate these potential savings.

In addition, other titles of the bill could affect state and local budgets. If the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the United States are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the United States and the potential effectiveness of the bill's sanction provisions.

7. Estimate comparison: None.

8. Previous CBO estimate: On August 20, 1985, CBO prepared a cost estimate for S. 1200, the Immigration Reform and Control Act of 1985, as ordered reported by the Senate Committee on the Judiciary, July 30, 1985. The estimated budget impact of S. 1200 is shown below:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated net increase or decrease (—) in the deficit	−25	99	126	341	328

S. 1200 authorized total appropriations for the INS of $840 million in 1987 and $830 million in 1988. CBO's estimate of the impact of that authorization was the increase over the existing baseline funding level for INS. The Senate bill did not authorize appropriations for the Executive Office of Immigration Review.

The legalization provisions of H.R. 3810 and S. 1200 also differ significantly. First, in H.R. 3810, unauthorized aliens qualify for residence status if they arrived in the United States before January 1, 1982. In S. 1200, they qualify if they arrived before January 1, 1980. Consequently, the House bill would make more aliens eligible for resident status—1.4 million versus 0.6 million—and would result in higher outlays for state assistance and federally-funded income security and health programs. The House bill also legalizes unauthorized aliens who worked in agriculture between May 1, 1985 and May 1, 1986, adding another 0.25 million aliens who would receive federal program benefits immediately. Second, S. 1200 provides no education assistance to states. Third, S. 1200 precludes receipt of federal program benefits based on "financial need" for six years, instead of H.R. 3810's five years, and does not except the aged and disabled or children, pregnant women, and medical emergencies from the prohibition on receipt of federal benefits. Fourth, S. 1200 authorizes a capped entitlement for payments to states of $300 million a year for the first two years and $600 million a year for the next four years, beginning with the year in which the application period ends, compared to authorization of

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full reimbursement for five years in H.R. 3810. Finally, S. 1200 slows the legalization process by an estimated two years by requiring a Legalization Commission to find that more effective enforcement measures had been instituted with adequate resources to curtail the entry and stay of unauthorized aliens before legalization could proceed.

9. Estimate prepared by: Janice Peskin, Marjorie Miller, Linda Radey, Paul Cullinan, Lynne Davidson, Julia Isaacs, and Anne Manley.

10. Estimate approved by: C.G. Nuckels, for James L. Blum, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

Oversight

No oversight findings have been presented to the Committee by the Committee on Government Operations. The Committee's (Education and Labor) own findings are incorporated throughout the discussion above, "Analysis of Major Provisions."

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, except as shown below, are shown in part 1 of this report, filed by the Committee on the Judiciary on July 16, 1986. The differences between the bill as reported by the Committee and as reported by the Committee on the Judiciary are shown below using the following typographical devices (with "Judiciary" referring to the Committee on the Judiciary and "E&L" referring to the Committee on Education and Labor):

Existing law—

in which no change is proposed by Judiciary or E&L, printed in roman.

proposed to be omitted by both Judiciary and E&L, enclosed in black brackets, viz., [ ].

proposed to be omitted only by Judiciary (and not by E&L), printed in ~~linetype~~

proposed to be omitted only by E&L (and not by Judiciary), enclosed in black parentheses, viz., ( ).

New matter—

proposed to be inserted by both Judiciary and E&L, printed in *italic*.

proposed to be inserted only by Judiciary (and not by E&L), printed in ~~*italic linetype.*~~

proposed to be inserted only by E&L (and not by Judiciary), printed in **boldface roman.**

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IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

* * * * * * *

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

*SEC. 245A. (a) * * **

* * * * * * *

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

*(1) * * **

* * * * * * *

(3) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

*(A) * * **

* * * * * * *

(G) ~~Subparts 4 and 5 of part A of title~~ **Title** *IV of the Higher*

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

*(1) * * **

* * * * * * *

(5) ~~USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.~~

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements

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specified in the following three paragraphs (and, to the extent applicable, paragraph ~~(7)(C)~~ **(6)(C)***:*

(1) * * *

* * * * * * *

~~*(5) TIME FOR COMPLIANCE.—A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity.*~~

~~*(6)*~~ **(5)** *LIMITATION ON USE OF ATTESTATION FORM.—* * *

~~*(7)*~~ **(6)** *SOCIAL SECURITY ACCOUNT NUMBER VALIDATION SYSTEM.—*

* * * * * * *

(d) PENALTIES.—

(1) CIVIL MONEY PENALTY FOR UNLAWFUL EMPLOYMENT, RECRUITING, OR REFERRAL.—

(A) * * *

~~*(B) CRIMINAL PENALTY FOR PATTERN OR PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (3) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.*~~

(B) CIVIL MONEY PENALTY FOR PATTERN AND PRACTICE VIOLATIONS.—In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall, after having been afforded notice and opportunity for an administrative hearing, be subject to a civil penalty of not less than $3,000, and not more than $10,000, for each unauthorized alien with respect to whom the violation occurred.

* * * * * * *

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS—

(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees.

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(B) a person's or entity's discrimination became of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964.

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government, or

(D) discrimination against an individual on the basis of the individual's English language skill in those certain instances where the English language skill is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term "citizen or intending citizen" means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who–

(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service processing the application shall not be counted toward the 2-year period.

(b) CHARGES OF VIOLATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice **(or a person on that person's behalf)** *or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (d)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The ~~person filing a charge~}* **Special Counsel by certified mail** *shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigra-*

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tion-related employment practice) on the person or entity involved within 10 days.

(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) SPECIAL COUNSEL.—

(1) APPOINTMENT.—The President shall appoint by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the "Special Counsel") within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) DUTIES.—The Special Counsel shall be responsbile for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (i(1).

(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attoney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) INVESTIGATION OF CHARGES.—

(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(3) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

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(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel ~~and the service of a copy thereof with the person or entity against whom such charge is made~~. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) HEARINGS.—

(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing , **upon the motion of the party filing the complaint,** *in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.*

(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a ~~full~~ party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure

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to obey such order may be punished by such court as a contempt thereof.

(g) DETERMINATIONS.—

(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding on order, **which shall be final unless appealed as provided under subsection (i).**

(2) ORDERS FINDING VIOLATIONS.—

(A) IN GENERAL.—If, upon the preponderance of the ~~*testimony taken,*~~ **evidence** *an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.*

(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay; and

(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a share with an administrative law judge. Interim warnings or amounts earnable with reasonable diligence by the individual or individual discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not

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under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the ~~testimony taken~~ **evidence** *an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.*

(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

~~*(i) APPLICATION OF CERTAIN NLRB PROCEDURES.—*~~

~~*(1) IN GENERAL.—The provisions of subsections (d), (e), (f), (g), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that—*~~

~~*(A) the authority of the General Counsel or the National Labor Relations Board under subsections (d), (f), and (g) and the second through seventh sentences of subsection (c) shall be exercised for purposes of this paragraph through the Special Counsel or the administrative law judge involved, respectively, and*~~

~~*(B) the authority of the National Labor Relations Board under subsection (j) and the first sentence of subsection (e) shall be exercised for purposes of this paragraph through the Special Counsel.*~~

~~*(2) AWARDING OF ATTORNEYS' FEES.—In any proceeding referred to in paragraph (1), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.*~~

(i) REVIEW OF FINAL ORDERS.—

(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in

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such court a written petition praying that such order be enforced.

(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.

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HIGHER EDUCATION ACT OF 1965

TITLE IV—STUDENT ASSISTANCE

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SEC. 484. (a) * * *

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(3) The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

(1) * * *

* * * * * * *

(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

(A) * * *

(B) the ~~applicable fair hearing process~~ **fair hearing process (which includes, at a minimum, the requirements of paragraph (6))** *shall be made available with respect to the individual.*

(6) The minimal requirements of this paragraph for a fair hearing process are as follows:

(A) The institution provides the individual concerned with written notice of the determination described in paragraph (5) and of the opportunity for a hearing respecting the determination.

(B) Upon timely request by the individual, the institution provides a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status.

(C) Not later than 45 days after the date of an individual's request for a hearing, the official will notify the in-

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dividual in writing of the official's decision on the appeal of the determination.

* * * * * * *

(e) Notwithstanding subsection (c), if—

(1) a guaranty is made under this title for a loan made with respect to an individual,

(2) at the time the guaranty is entered into, the provisions of subsection (c) had been complied with,

(3) amounts are paid under the loan subject to such guaranty, and

(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date of the entity receives the notice.

* * * * * * *

ADMINISTRATIVE EXPENSES

SEC. 489. (a) From the sums appropriated for any fiscal year for purposes of the program authorized under subpart 1 of part A, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 487, an amount equal to $5 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 2 of part A or part C (other than section 448), of this title or under part E of this title shall be entitled for each fiscal year for which it receives an allotment by payment under any such part to a payment for the purposes set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 per centum of the institution's first $2,750,000 of expenditures plus 4 per centum of the institution's expenditures greater than $2,750,000 and less than $5,500,000, plus 3 per centum of the institution's expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 2 of part A, its expenditures during such fiscal year under part C for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amounts of any such loans which the institution has agreed to assign under section 463(a)(6)(B). The payment for a fiscal year for the purpose of subsection (b) with respect to section 448 shall be payable from each allotment under part C in accordance with regulations of the Secretary, and shall be 10 per centum of the institution's expenditures during such fiscal year under such section. **In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the insti-**

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tution in implementing and operating the immigration status verification system under section 484(c).

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MINORITY VIEWS ON H.R. 3810

Although some of us supported and some of us opposed reporting H.R. 3810, we are in agreement that the bill contains some very problematic provisions that need to be addressed by the House.

ANTI-DISCRIMINATION PROVISION

We believe that the discrimination provisions will result in the creation of a new, costly bureaucracy that is unnecessary and duplicative.

The anti-discrimination provisions were included as part of the immigration bill because of the fears that employers, faced with the possibility of sanctions if they knowingly hired illegal aliens, would refuse to hire anyone who appeared to be "foreign." It is arguable whether the fear of discrimination because of sanctions is well founded; sanctions can be avoided by relatively simple steps to verify a workers's status. Moreover, a GAO study, updated in October 1985, concluded that in other countries where employer sanctions had been adopted, there was little or no evidence of discrimination against non-citizens.

If we are going to adopt tougher anti-discrimination measures, however, we see no sense in entrusting the enforcement of these provisions to a new office within the Department of Justice, rather than to the Equal Employment Opportunity Commisson (EEOC). The bill prohibits two forms of employment discrimination: discrimination on the basis of citizenship status and discrimination on the basis of national origin. The prohibition of national origin discrimination is limited to employers of four to fourteen; employers of fifteen or more are already covered by Title VII of the Civil Rights Act of 1964. No Federal law now prohibits discrimination on the basis of citizenship status, although under EEOC guidelines citizenship requirements are already deemed violative of Title VII when they have the purpose or effect of discriminating against an individual on the basis of national origin.

If the bill's anti-discrimination provisions are adopted, national origin discrimination claims would be split between two agencies. For employers with four to fourteen employees, the national origin discrimination claims will be enforced by a new Special Counsel in the Department of Justice. For employers with fifteen or more employees, national origin discrimination claims would be enforced by the EEOC.

All citizenship discrimination cases are to be enforced by the new Special Counsel (no matter how large the employer). It is difficult to see any practical distinction between citizenship discrimination and national origin discrimination. The facts needed to prove discrimination on the basis of citizenship would stem from the same

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source as those relied upon with respect to national origin discrimination claims.

We can see no reason why a new office of Special Counsel is necessary for the enforcement of these anti-discrimination provisions. With the EEOC, we already have an agency with the expertise and personnel for enforcement of national origin discrimination claims. Citizenship claims are so similar to national origin claims that they, too, should be enforced by the EEOC. The new office of Special Counsel is unnecessarily duplicative and expensive. Splitting enforcement of similar discrimination claims between two authorities may well give rise to disparate treatment for claimants with essentially identical grievances.

SPECIAL AGRICULTURAL WORKERS PROVISION

In addition to generally codifying the requlations governing the temporary foreign worker program under Section 215 of the Immigration and Naturalization Act, this bill creates a new class of workers called "Special Agricultural Workers" (SAWs). This group of workers is singled out for special treatment and is granted immediate permanent resident status and immediate eligibility for the full range of Federal benefits. Individuals who do not work in agriculture must wait five years before they are eligible for most Federal benefits. Likewise, undocumented workers who have not worked in agriculture have a continous residence requirement that is thirty times as long as that of SAWs.

Inasmuch as the Republicans have had no opportunity to participate in the development of this provision, we believe our Minority Views to be an appropriate place to examine this provision carefully.

Who is eligible.—Any alien who can establish that he or she performed seasonal agricultural services in the United States for at least 60 man-days (a man-day is defined to mean any day during which an employee performs any agricultural labor for not less than one hour) during the twelve-month period ending May 1, 1986. The alien can be either inside or outside the U.S. when application is made.

Who receives the application.—The Attorney General shall designate qualified voluntary organizations, qualified State, local, community, farm labor organizations and associations of agricultural employers who have substantial experience in the preparation and submittal of applications for adjustment in status.

Proof of eligibility.—Government employment records, employer records, or organized labor's records may be used to establish proof of previous agricultural employment. Also, the Attorney General must establish procedures to credit work performed by an alien under an assumed name.

Penalties.—Knowing and willful falsification or concealment of material used in applications is subject to a fine and imprisonment of up to five years.

Numerical limitations.—None.

What are seasonal agricultural services.—This term is defined to mean the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegeta-

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bles and other perishable commodities as defined by the Secretary of Agriculture.

There is nothing in the legislation to require SAWs' continued employment in agriculture. An alien who applies for permanent resident status under the SAW provision may stay in this country and work in any occupation while his or her application is pending.

The bill requires that the Director of the Census Bureau, rather than the Attorney General, the Labor Department, or the Agriculture Department, "count" the number of SAWs during the year beginning in 1989. This number will be used as the base for determining the number of replenishment workers who may be admitted to work in agriculture in the following years.

The maximum number of replenishment workers declines by 5 percent less the number of SAWs the first year and by 10 percent the succeeding years until 1995 when the rate of decline reverts to 5 percent. However, before the percentage decrease occurs, there is a complicated formula in the bill which, limited by the cap, produces the number of admissible SAWs: the formula is, "shortage number" = (need of workers − supply of workers) ÷ a conversion factor.

The numbers of workers who would be granted permanent resident status under such a program are purely speculative. Guesses range from 200,000 to over 1,000,000.

It is our position that the immigration laws of our country should be applied equally. There should not be two sets of rules—one for agricultural workers and one for everyone else.

The Majority argued that any effort in committee to change these rules would kill immigration reform for yet another Congress, regardless of the merit of the rules or changes proposed. This Congress and this country suffer when we foreclose debate and amendment.

The consensus among the Republicans was that the Committee was not the place to work on this provision, but we certainly need to work on this section before it leaves the House.

CONCLUSIONS

We believe that a reasonable approach exists which would meet the needs of agricultural growers while at the same time treat all legalized aliens equitably. We intend to strive for a bill that provides for adequate protections to foreign workers, strong labor standards to domestic workers with enough flexibility to be responsive to growers needs in harvesting perishable crops.

JIM JEFFORDS.
BILL GOODLING.
TOM PETRI.
MARGE ROUKEMA.
STEVE GUNDERSON.
STEVE BARTLETT.
ROD CHANDLER.
JOHN R. MCKERNAN, Jr.
DICK ARMEY.
HARRIS W. FAWELL.

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ADDITIONAL VIEWS OF MR. FAWELL AND MRS. ROUKEMA

We generally concur with the Minority views to H.R. 3810, the Immigration and Legalization Amendments of 1986, particularly as they pertain to the bill's anti-discrimination provisions. The mechanism established by H.R. 3810 is duplicative. Congress should only endow the Equal Employment Opportunity Commission (EEOC) with the authority to enforce the bill's citizenship discrimination and national origin discrimination measures.

The committee erred in its decision to strike the criminal penalty provisions of the Judiciary bill. As reported by the Judiciary Committee, H.R. 3810 establishes criminal penalties against those employers who engage in a "pattern or practice" of knowingly hiring, recruiting, or referring unauthorized aliens and for knowingly continuing to employ an alien after learning that he or she is unauthorized. Specifically, the employer would be subject to criminal penalties of not more than $1,000 and/or imprisonment for not more than six months for each such violation.

The Judiciary bill also contains civil money penalties against those employers who hire, or recruit for a fee, for employment an alien knowing the alien is unauthorized with respect to such employment or who, after hiring any such alien, continue to employ the alien knowing the alien is anauthorized. These civil penalties are not less than $1,000 and not more than $2,000 for each unauthorized alien with respect to whom the violation occurred.

The committee agreed by an 11-9 vote to delete the criminal penalty provisions for those employers guiity of a general practice of violations under the Act and replace them with only civil penalties of not less than $3,000 and not more than $10,000 for each infringement of such "pattern and practice violations."

In defense of the amendment, Members claimed that the threat of criminal penalties would encourage employers to discriminate in hiring against Hispanics. We disagree. First, the criminal penalties are meant to hit the unrepentant employers who are indeed guilty of a general practice of illegally hiring undocumented aliens. The fear of criminal sanctions for such employers, with the possibility of imprisonment, will alone give effective notice to such employers that they cannot make it a "pattern and practice" to flaunt the new law. A lean immigration policy demands no less.

Second, H.R. 3810 includes provisions making it an unfair immigration-related employment practice to discriminate against an individual, other than an unauthorized alien, based on national origin or citizenship status. To enforce these anti-discrimination provisions, the bill creates a Special Counsel in the Justice Department, charged with the responsibility of investigating and prosecuting discrimination charges. Furthermore, the Education and Labor Committee approved an amendment which further strengthens the procedural aspects of the bill's anti-discrimination provisions.

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Again, the criminal provisions of the Act are aimed only at those employers who are unrepentant and make it a general practice to knowingly hire undocumented aliens rather than follow the elementary provisions of the Act. It is pure legal sophistry to argue that such criminal sanctions aimed at such employers will force the average employer to knowingly breach the anti-discrimination portions of the Act. Criminal sanctions are only reserved for the employer who is able to accept civil monetary penalties as a way of "doing business."

The most offensive provision of H.R. 3810 is the Special Agricultural Worker Program. This provision gives permanent resident status to illegal aliens who worked in agriculture for at least sixty days during the twelve-month period ending May 1, 1986. These workers would also be immediately eligible for entitlement benefits, such as food stamps, AFDC, Medicaid, SSI, and unemployment compensation.

The "compromise" program agreed to by labor and agricultural producers has two major problems. First, the program provides a separate legalization track for a selected group of illegal aliens. Whereas aliens not in agriculture must prove their presence in the U.S. since 1982 in order to obtain temporary resident status, these agricultural workers only have to have worked in agriculture for sixty days between May 1, 1985 and May 1, 1986 to receive permanent resident status. This dual legalization process is unfair and blatantly discriminates against nonagricultural workers. Agricultural workers will be eligible for federal benefits immediately; all others will have to wait five years.

Second, the program completely ignores the need to implement effective immigration laws. Instead of curbing immigration, this program will encourage more immigrants to come to the United States. This will be achieved in two ways. Because aliens working in agriculture can qualify immediately for permanent resident status, they may bring their immediate family into the country and all qualify for federal benefits.

Further undercutting an effective immigration policy is the bill's replenishment worker provisions. Once agricultural workers have obtained their permanent resident status, many may leave agriculture for other occupations, or public aid. The bill allows for replenishment workers if unforeseen circumstances lead to a shortage of workers. After working in agriculture for at least two years (at least sixty days each year), replenishment workers will be eligible for permanent resident status, and subsequently eligible for public aid. These workers could now bring immediate families to the U.S. and qualify for federal benefits.

This "compromise" agricultural worker program is disasterous. Although agricultural producers will benefit from this scheme, the welfare of the country will not. The Washington Post is right on target when it says: "Members will have to weigh the broad interests of the country against the specific desires of some groups. Unless a more reasonable compromise on agricultural workers is devised, reform is surely doomed."

We agree with this assessment of the agricultural worker program and urge our colleagues to oppose H.R. 3810 as long as this program remains intact. We are for immigration reform but H.R.

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3810 with this overgenerous agricultural worker program, is not the solution. It is only the beginning of bigger immigration problems for our nation.

HARRIS W. FAWELL.
MARGE ROUKEMA.

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ADDITIONAL VIEW OF HON. STEVE BARTLETT ON THE ELIMINATION OF THE CRIMINAL PENALTY FOR PATTERN AND PRACTICE VIOLATIONS

The Committee replaced the criminal sanctions for pattern and practice violations by employers with civil sanctions of not less than $3,000 and not more than $10,000 for each unauthorized alien in respect to whom a violation occurred. This civil penalty is stringent enough to act as a deterrent to unauthorized employment. Concern was expressed by the Committee that criminal sanctions on employers could result in discrimination at the hiring level against otherwise qualified persons merely because of their foreign countenance.

STEVE BARTLETT.

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